

BARRY E. HINKLE, Bar No. 071223
KRISTINA L. HILLMAN, Bar No. 208599
CONCEPCIÓN E. LOZANO-BATISTA, Bar No. 227227
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501-1091
Telephone (510) 337-1001
Fax (510) 337-1023

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES of the) No. C 08 01067 CW
CARPENTERS HEALTH AND WELFARE)
TRUST FUND FOR CALIFORNIA;)
CARPENTERS VACATION-HOLIDAY TRUST)
FUND FOR NORTHERN CALIFORNIA;)
CARPENTERS PENSION TRUST FUND FOR)
NORTHERN CALIFORNIA; CARPENTERS)
ANNUITY TRUST FUND FOR NORTHERN)
CALIFORNIA; and CARPENTERS TRAINING)
TRUST FUND FOR NORTHERN)
CALIFORNIA, and CARPENTERS 46)
NORTHERN CALIFORNIA COUNTIES)
CONFERENCE BOARD for itself and on behalf)
of NORTHERN CALIFORNIA CARPENTERS)
REGIONAL COUNCIL and CARPENTERS)
UNION LOCAL NO. 22)

**DECLARATION OF CONCEPCIÓN
E. LOZANO-BATISTA IN SUPPORT
OF MOTION FOR DEFAULT
JUDGMENT**

Date: June 6, 2008
Time: 9:30 a.m.
Courtroom: A, 15th Floor

Honorable Joseph C. Spero

Plaintiffs,

v.

SAUL M. CRUZ, Individually; SAUL M. CRUZ,)
Individually and doing business as SMC)
MODULAR INSTALLATION; MAGDALENA)
L. CRUZ, Individually; MAGDALENA L.)
CRUZ, Individually and doing business as SMC)
MODULAR INSTALLATION; SMC)
MODULAR INSTALLATION; Does 1 through)
10, inclusive)

Defendants.

DECLARATION OF CONCEPCIÓN E. LOZANO-BATISTA IN SUPPORT OF MOTION FOR DEFAULT
JUDGMENT

Case No. C 08 01067 CW

I, CONCEPCIÓN E. LOZANO-BATISTA, hereby declare that:

1. I am an attorney at law, admitted to practice before this Court, and an associate with the law firm of Weinberg, Roger & Rosenfeld (“the Law Firm”), attorneys for Plaintiffs in the above-referenced matter. I make this declaration upon my personal knowledge, and, if called as a witness, I could competently testify to the facts hereinafter stated.

2. The legal basis upon which Plaintiffs’ seek a Default Judgment in this case is set forth in Plaintiffs’ Notice of Motion and Motion for Default Judgment; Declaration of Jim Crotty; Declaration of Michael J. Plommer; Declaration of Concepción E. Lozano-Batista; Memorandum of Points and Authorities; and the [Proposed] Order filed concurrently herewith.

3. A complaint for audit, injunction, breach of contract and damages was filed against Defendants, on February 22, 2008. Default was entered April 1, 2008. Given the fact that Defendants have abandoned their business, begun operating a new business, and have refused to make payments as required to Plaintiffs, Plaintiffs have done some investigation into the assets of Defendants to use in an enforcement action.

4. The following work was performed on this case by Plaintiffs’ attorneys at the billable rate of \$200.00 per hour:

Date	Timekeeper	Description	Hours	Rate	Fee
1/25/08	BEH	Initial review of all documentation received from Trust Fund; three grievances; letter to Trust Fund; new file opening procedure.	1.75	\$200	\$350.00
1/29/08	CLB	Review file; Phone call to Jim Crotty	.75	\$200	\$150.00
2/7/08	CLB	Phone call with Jim Crotty re liquidation of assets by owners of SMC Modular	.25	\$200	\$50.00
2/8/08	CLB	Phone call with Jerrod Misuzawa, Mike Plommer and Dennis Portola re demand letter to be sent to Norcal on behalf of moneys owed by SMC Modular	.50	\$200	\$100.00
2/21/08	CLB	Review file; Review and revise Complaint; Phone call with Union re employer's current status	1.50	\$200	\$300.00
2/28/08	CLB	Review scheduling order from court and standing orders	.25	\$200	\$50.00

- 2 -

DECLARATION OF CONCEPCIÓN E. LOZANO-BATISTA IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

Case No. C 08 01067 CW

3/5/08	CLB	Review investigation documents; Phone call with Kala Lyons of Derish and Associates re assets of SMC and Cruz family; Phone call with Eric Muldeven re same; Email correspondence to Kala Lyons re other searches to perform; Legal research re assets to attach	1.50	\$200	\$300.00
3/7/08	CLB	Review fax from Jim Crotty re Cruz assets	.25	\$200	\$50.00
3/27/08	CLB	Review file; Draft Request for Entry of Default; Draft Declaration in Support of Request for Entry of Default	1.00	\$200	\$200.00
4/1/08	CLB	Phone call with Jim Crotty re status of case; Review Entry of Default by Court; Draft correspondence to client notifying them of entry of default by Court	.50	\$200	\$100.00
4/4/08	CLB	Review report by Kala Lyons of Darish and Associates re assets of Cruz family	.50	\$200	\$100.00
4/4/08	CLB	Draft correspondence re appearance at settlement conference	.25	\$200	\$50.00
4/8/08	CLB	Review Order from Court re filing of Motion for Default Judgment and re resetting of Case Management Conference	.25	\$200	\$50.00
4/9/08	CLB	Review file; Phone call to Trust Funds re promissory note; Review correspondence from Jim Crotty; Draft Notice of Motion and Motion for Default Judgment; Draft Proposed Order; Draft Declaration of Conchita Lozano; Draft Declaration of Michael Plommer	3.0	\$200	\$600.00
4/10/08	CLB	Review file; Draft Declaration of Jim Crotty; Draft Memorandum of Points and Authorities in Support of Motion for Default Judgment; Meeting with Jim Crotty to review Declaration	3.5	\$200	\$700.00
TOTAL:			15.75		\$3,150.00

5. Barry Hinkle (BEH) is a shareholder with the Law Firm. Mr. Hinkle graduated from University of California at Hastings and was admitted to the California Bar in 1976. Mr. Hinkle has been with the firm for 22 years, specializing exclusively in ERISA work. Mr. Hinkle has represented trust fund clients in Hawaii, Arizona, Nevada, Alaska and Northern California. Mr. Hinkle's time was billed at the rate of \$200.00 per hour.

6. I, Concepción E. Lozano-Batista (CLB), am a fourth-year associate with the Law Firm. I earned a Bachelor of Arts degree in Political Science and Spanish Literature in May 1996. Upon graduating, I worked for a number of technology companies while volunteering as a representative and interpreter at the East Bay Sanctuary Covenant in Berkeley. I graduated from University of San Francisco School of Law in May 2003 and was admitted to the Bar in December 2003. I have been with the Law Firm since August 2004, working on a variety of ERISA matters, including collection work in State and Federal Courts on behalf of a number of Trust Fund clients, litigating and counseling on issues involving ERISA, trust fund collection, benefit denials, as well as general litigation work on numerous cases. My time was billed at the rate of \$200.00 per hour.

7. The following work was performed on this case by this law firm's paralegal department.

Date	Timekeeper	Description	Hours	Rate	Fee
2/7/08	ERN	Background and asset research re Saul M. Cruz, Magdalena L. Cruz and Saul G. Cruz; email to investigator re additional asset searches required re SMC Installations and the owners; consult with C. Lozano-Batista re preparation of Petition to Confirm arbitration awards.	1.75	\$95	\$166.25
2/8/08	ERN	Preparation of Petition to Confirm Arbitration Awards and Complaint for Audit	4.0	\$95	\$380.00
2/11/08	ERN	Preparation of documents: Petition to Confirm Arbitration Awards and Complaint for Audit; Memorandum of Points and Authorities; consult with T. Oviedo and C. Lozano-Batista re same	3.5	\$95	\$332.50
2/25/08	JC	Review of applicable rules to determine due date triggered by complaint being filed	.50	\$95	\$47.50
3/5/08	ERN	Review of applicable rules to determine due dates triggered by Complaint (Petition to Confirm Arbitration Awards) served on Saul M. Cruz, individually and dba SMC Modular, Magdalena Cruz, individually and dba SMC Modular	.50	\$95	\$47.50
TOTAL:			10.25		\$973.75

8. Eleanor Natwick (ERN) was a Litigation Case Clerk with the Law Firm during the

period of October 1980 to January 14, 2007, working within the paralegal department. Ms. Natwick holds a Bachelor of Arts in English from Western Michigan University and a teaching credential. Prior to joining the Law Firm, Ms. Natwick worked as a teacher. Ms. Natwick has been with the Law Firm for twenty-six years and has worked as a Litigation Case Clerk since March 1, 2003. Ms. Natwick took a number of paralegal courses prior to becoming a Litigation Case Clerk and earned her paralegal certificate from the University of California at Berkeley in June 2006. On January 15, 2007, Ms. Natwick was promoted to the position of paralegal at the Law Firm. Ms. Natwick's hourly billable rate on Trust Fund cases is \$95.00.

9. Judy Castillo (JC) is a senior paralegal in our office. Ms. Castillo earned her court reporting certificate from the College of Marin in 1994. She attended Cal State Hayward (East Bay) from 1994 through 1996. She received her paralegal certificate from Cal State Hayward (East Bay) in 1996. Ms. Castillo worked for various legal temporary agencies upon leaving school and was hired at the Law Firm in 1997 as a document coder. After working at the firm for one year, she was promoted to the position of paralegal at the Law Firm. Ms. Castillo briefly departed the Law Firm and worked as an office manager/legal secretary from 2005 through 2007 for a firm in Idaho and returned to the Law Firm in January 2008 to work as a paralegal. Ms. Castillo's hourly billable rate on Trust Fund cases is \$95.00.

10. Based on the foregoing the total amount of attorneys' fees billed is \$4,123.75. Our client has been billed for all work described above in the amount indicated. The unbilled work associated with Plaintiffs' Amended Motion for Default Judgment is estimated at approximately \$900.00. The estimated total attorneys' fees is \$5,023.75.

11. The following costs have been incurred by Plaintiffs' attorneys:

Date	Description	Cost
2/22/08	Filing fee re: Petition and Complaint in U.S. District Court, Northern District of California	\$350.00
2/22/08	Photocopies re Petition exhibits, etc., for personal service	\$240.00
2/22/08	Fees for investigation services re Cruz assets	\$1,300.00

2/22/08	Messenger/filing service to file Petition in U.S. District Court - Oakland on 2/22/08	\$64.00
2/27/08	Service of documents on Saul M. Cruz, individually in San Francisco, CA	\$49.50
2/27/08	Service of documents on Saul M. Cruz, individually and DBA in San Francisco, CA	\$49.50
2/27/08	Service of documents on Magdalena L. Cruz, individually in San Francisco, CA	\$24.75
2/27/08	Service of documents on Magdalena L. Cruz, individually and DBA in San Francisco, CA	\$24.75
2/27/08	Service of documents on SMC Modular Installation in San Francisco, CA	\$24.75
4/3/08	Fees for investigation services for services rendered in March 2008 re Saul and Magdalena Cruz: DMV searches, Maria Cruz ID, Property research, West Installers, bank searches	\$1,400.00
TOTAL:		\$3,527.25

13. Based on the foregoing, the total amount of costs incurred to date is \$3,527.25. Our client has been billed for the costs described above in the amount indicated. Our client will be billed for courier service for filing Plaintiffs' Motion for Default Judgment and related papers.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of April 2008, at Alameda, California.

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/
CONCEPCIÓN E. LOZANO-BATISTA

118076/489788